

**PLANNING INVOLVING FARM PROPERTY  
AND CHARITABLE CONCEPTS  
THAT BENEFIT THE DONOR AND FAVORED CHARITIES –**

**WHAT IS THE ROLE OF  
COMMUNITY FOUNDATIONS  
IN ACTIVELY EXPLORING OPTIONS WITH PEOPLE?**

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Pamela Jones Davidson, J.D., is President of **DAVIDSON GIFT DESIGN**,<sup>2</sup> Bloomington, Indiana, a consulting firm specializing in gift planning, planned giving program design and implementation, and training. She is also a Vice President with **THOMPSON & ASSOCIATES**, offering estate planning services to nonprofits. Before forming her own company in 1999, she was a charitable gift planner and consultant for three years with Laura Hansen Dean and Associates, Indianapolis, Indiana. From 1985 through 1996, she was with Indiana University Foundation, leaving that organization as its Executive Director of Planned Giving and Associate Counsel.

Ms. Davidson received her undergraduate degree from Indiana University in 1975, and graduated *magna cum laude* and top ten percent (10%) from the Indiana University School of Law at Indianapolis in 1979. She has previously been an examiner in the Estate and Gift Tax Division of the Internal Revenue Service, and later practiced business, corporate and probate law with the Indianapolis law firm of Bingham, Summers, Welsh & Spilman before joining the nonprofit sector in 1985.

Ms. Davidson was the 1999 President of the National Committee on Planned Giving (now, Partnership for Philanthropic Planning, PPP), and served NCPG in various capacities during her six years on the Board, in 1995 as Education Chair, in 1996 as Secretary, and as President Elect in 1998. She served as NCPG's 2000 Nominating Committee Chair and as a past president, is a current member and current Chair of its Ethics Committee.

Ms. Davidson is on the Editorial Board of the Planned Giving Design Center, and faculty of The College of William and Mary National Planned Giving Institute. She is a past board member and past treasurer of the Indiana Chapter of the National Society of Fund Raising Executives (now, Association of Fundraising Professionals, AFP), and a past board member and president of the Planned Giving Group of Indiana. She is a past president of the Network of Career Women, and a Leadership Bloomington alumna. She is on the Boards of her local Edgewood Choral Foundation and Buskirk-Chumley Theatre. She is on the Board and past president of Middle Way House, her community's nationally recognized women's shelter now in a capital funding project and raising endowment, and serves on the Community Advisory Boards of both her local public radio and television stations.

Ms. Davidson has made countless presentations throughout the state of Indiana and nationally to development professionals, planned giving councils, estate and tax attorneys, accountants and financial planners, and to prospects and donors about planned giving and charitable giving techniques.

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## Gifts of Assets: Real Estate

- ❖ Outright gift of part or all real property, done during life by a deed, or in a will or trust and effective at death.
  - Can give all or part, debt can matter to charitable plan choices available to the donor.
  - If eventually want a charity to have part or all of the real estate, can effect during life or at death, depending on donor needs.
- ❖ Gift of real property subject to life estate – can effect during life or at death, and can use only a personal residence, vacation home or farm – cannot use investment, rental property.
  - If during life, donor reserves on face of deed, the right of you and spouse/sibling/partner to live on the gifted property for the rest of your lives.
  - Gives rise to an actuarial income tax deduction, real estate now out of estates but life unchanged – you continue to reside on the property, pay its taxes and insurance.
  - Would only consider this option if older, at least over age 70 even older, and especially if have no taxable estate, this plan allows to receive an income tax deduction, valuable to everyone. Have simplified estate, perhaps reducing costs.
  - Can either deed rest of life estate to charity or sell jointly with charity, if decide to move from the gifted property.
- ❖ Can partition land, giving some outright to a charity, retain rest of farm or real property for self and family. May want to restrict some for natural uses, if work with charity over details and endow the support of the held land with cash or other marketable assets.
- ❖ Can deed property, even an undivided fractional interest thereof so all or part can be used, to fund a charitable gift annuity – fixed, guaranteed income for self and spouse/sibling/partner for life.
  - Avoids capital gains upon funding of a fractional interest, actuarial charitable income tax deduction, way to provide guaranteed, fixed income to you and surviving spouse, asset out of estates.
  - Simple contract involved.

- Rates often higher than market rates, best for older individuals.
- Individuals can
  - defer when income from the charitable gift annuity will start
  - receive an income tax deduction in the year the gift annuity is funded
  - offset mandatory income tax inclusion of a retirement plan distribution
- ❖ Can use property to fund a charitable remainder trust, a unitrust (variable income and market-driven, can add to) form.
  - Can provide income to self and spouse, and/or to others like children, for either life or term up to twenty years.
  - Avoids capital gains taxes, results in actuarial charitable income tax deduction, removes asset from estate, favorable tax and income consequences.
- ❖ Can deed property to a charitable lead trust – pays income during trust term to charity or charities, at end of term, property returned to children or grandchildren.
  - Very favorable estate and gift tax consequences, rarely done for income tax reasons, great way to qualify for a matching gift or pay off a charitable pledge.
  - If done properly, appreciation in gifted asset benefits family at end of trust term with minimal tax consequences today. Never a better time to consider this gift plan, due to today's economic factors.
- ❖ Can transfer property to a charity in a bargain sale, taking less than fair market value for the property, with some favorable income tax consequences.
  - Charity would have to have funds to purchase the property even with a reduced price
  - Considered most often when charity has a use for the property in furtherance of its exempt purpose.
- ❖ Gifts of real estate require documentation and homework
  - the same documentation and process that would be required for a sale
    - including no less than a Phase One and sometimes a Phase Two environmental audit
    - Protects the tax deduction of the donor

- Protects the charity too, for it will be in the chain of title and therefore be subject to any potential liability.

❖ **Why plan?**

- Because many of us have already selected the charity of our choice, Uncle Sam.
- Planning means your intent controls and your wishes fulfilled. Otherwise, the state plans for you, based on (traditional) family ancestors and descendants, related by blood.
- Charity will never be included in an unplanned estate.
- Can incur significant costs by failure to plan, dissipates what you want to leave family, friends and charities.

❖ ***Charitable planning can mean a legacy of your own design and choosing, can endow your annual support to favored charities. And, variety of gift options means that your personal needs can be addressed and furthered in your plan.***

## ❖ **Gifts of Assets: Crops, Livestock and Equipment**

Materials From: Phil Purcell, Vice President of Planned Giving and Endowment Stewardship, Ball State University Foundation

### ❖ **Crops and Livestock: Limited Income Tax Deduction**

- "Ordinary Income Property" as inventory.
- Charitable deduction is limited to cost basis; further reduced by production costs already deducted. *Treas. Reg. § 1.170A-1(c)(4) Ex. 5*
- The charitable deduction may be \$0.00
- Gifts may be outright delivery, notarized letter of transfer, deed of gift or warehouse receipt.
- Crops can be donated to a charitable remainder trust. *PLR 8119009; PLR 9413020*

### ❖ **Gifts of Crops and Livestock: Save Income Tax Liability**

- Generally, no income recognition on gift.
- Save taxes by avoidance of potential income tax as well as avoidance of self-employment tax.
- Gift of crops will not count as income in government payments limitation caps calculation.
- Rev. Rul. 55-138; *White v. Broderick*, 104 F.Supp 213, 41 A.F.T.R. 1253 (D. Kan. 1952); *Campbell v. Prothro*, 209 F.2d 331, 45 A.F.T.R. 131 (5th Cir. 1954).

### ❖ **Gift of Crop Shares by Landlord**

- If the donor is a landlord (non-material participation), then a gift of the crop share (or the right to receive the crop) triggers income tax

recognition at the time of contribution.

- An offsetting charitable contribution deduction is allowed.
- The charitable contribution deduction is subject to the AGI limits.
- Rev. Rul. 75-11; PLR 8415030.

#### ❖ **Gift of Crop Shares by Tenant Farmer**

- Material participation
- A “farmer” may contribute without income recognition.
- Income tax charitable deduction.

#### ❖ **Gifts of Equipment (Tractors, Combines, etc.)**

- Equipment is tangible personal property.
- “Related use” rule applies.
- The income tax charitable deduction is limited to the donor’s cost basis if the property is sold or put to an “unrelated use” by the recipient charity.
- I.R.C. § 170(e)(1)(B)(i).
- The value of any property contribution is reduced by any gain that is not long-term capital gain.
- Therefore, the Fair Market Value must be reduced by any amount that is Sec. 1245 gain.
- Such gain is not UBTI so long as there is no “trade or business” by the charity. *PLR 9413020*.

#### ❖ **Gift of Farm Inventory to CRT**

- Farmer (sole proprietor) gave beans and slaughter cattle to CRT.
  - Charitable deduction limited to lesser of FMV or basis per IRC §170(e)(1) – in this case zero – because farmer had earlier deducted the costs of raising the cattle and crops as a business expense under

IRC §162. *PLR 9413020*.

➤ Benefits:

- Avoidance or deferral of income tax when the beans and cows were sold from the trust.
- CRT would not produce taxable income when the trustee sold the farm products – only as CRT made payments.
- Avoidance of self-employment tax on proceeds from the sale.

❖ **Gifts of Real Estate: Establishing Value**

➤ **Acknowledgement and Substantiation: Gift Receipts**

- Dollar value of non-cash gifts not required on the gift receipt.
- Charity required to only describe the donated property.
- Donors' duty to state and defend the tax deduction value - often misunderstood.
- Receipt must also disclose any *quid pro quo*.
- IRS Publication 1771 describes the gift receipt rules.

➤ **Qualified Appraisal**

- Qualified and independent appraisal required for deductions claimed over \$5,000.
- Dated within 60 days of date of gift.
- Penalties for failure to comply.
- IRS Publication 561: *Determining the Value of Donated Property*
- Procedure, Fees, Timing and Contents.
- Donor pays for appraisal – must defend on audit.
- Qualified appraisal for “unmarketable property” held by a self-trusted CRT.

❖ **Claim of Deduction**

- IRS Form 8283: Non-Cash Gifts



- If deduction claimed exceeds \$5,000, appraiser signs form acknowledging value and charity signs acknowledging receipt.
- Donor is not required to file copy of the gift receipt or qualified appraisal with tax return unless the deduction claimed exceeds \$500,000.

#### ❖ **Sale of Donated Property**

- IRS Form 8282: Reporting proceeds of sale of donated property by charitable organization.
- Filed if property is sold within three years of date of gift.
- IRS audit "red flag" if value of claimed for charitable deduction significantly exceeds the charitable organization's sale value

#### ❖ **Seeds for the Future...**